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FREDERIC WILLIAM
MAITLAND

A. L. SMITH

OXFORD
AT THE CLARENDON PRESS

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FREDERIC WILLIAM
MAITLAND

TWO LECTURES AND A BIBLIOGRAPHY

BY

A. L. SMITH

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SUMMARY

I

SCOPE AND LIMITS OF THE LECTURES.

It has been said, History does not advance; but History does advance since it has adopted the new method, the following up of (a) analytic by (b) constructive treatment, a combination best studied in Maitland's work. (a) is seen in his rule of retracing backwards, in his use of a comparative method, in his acute sense of differences. But he goes on to (b), the visualizing of his subject, putting it in concrete cases; compare Macaulay's felicity of illustration; similar examples from Maitland. This concreteness is one mark of his style; and a second mark is the recurrence of a *leit-motif*, e.g. in *Township and Borough*.—His constructive work is aided also (2) by his tolerance of coexistent opposites just as in real life; e.g. lordship, the shire moot, the test of freedom, the concepts of corporateness and of *dominium*; (3) by his pointed phrases used not for mere wit but to clinch an argument, examples: and also by use of modern parallels, examples.

But above and beyond his method rises his conception of History on its spiritual side. For, as he says, 'the writing of history is in some sort a religious act,' and a real historian cannot be anti-religious in any true sense; cp. Lord Acton's definition of the true historian. Maitland's intense sympathy with the past, his ardour and self-sacrifice; these and not Pietism make work religious. The other side of his conception of History is its humanity, examples, especially from his *Domesday*; the greatest of all methods is to enter into the past, by historic imagination; 'what men have done and said, above all what they have thought, that is history.' It is this which justifies the humour which is the most prominent quality in Maitland; an examination of his mode of using it in various books, especially in the chapter on The Reformation Settlement, and in the *Et cetera* title of Elizabeth, and in the sketch of Scotland 1560; the new points in his view of Elizabeth, his open-mindedness, and his appreciation of religious parties. But the extreme condensation lays him open to some criticisms, e.g. for coining new terms, for being over allusive; examples. But might not Maitland have become a great narrative historian?

II

Maitland's conversion from a pure lawyer to a legal historian. The 'converted' lawyer is a valuable recruit; (i) he is on guard against the idola of his own tribe; (ii) the history of law is the history of ideas, which is the highest kind of history; (iii) history alone can make law intelligible, and law throws light on history; examples of each; (iv) a lawyer-historian will not forget the practical end, cf. Maitland's eulogy of the German Code 1874-96. Yet his attitude is not too professional, cf. his *Braclon's Note-Book*, in which also comes out his dramatizing power; he is a scholar but no pedant. His sense of the value of legal history and of the preparatory work required. The *History of English Law* and the chapters in *Social England*; the prefaces to the *Year Books*; The *Crown Pleas of Gloucester* showing how English law is English history seen in action.

But even above the quantity is the quality of his work, its brilliance, its combination of scientific and literary sides, its mastery of material. This comes out even in brief reviews, e.g. 'Records of Lincoln's Inn' and the importance of the Inns of Court.

The sketch of a history of English law sixth to twentieth centuries in *Encyclopaedia Britannica*; his summary of laws passed 1800-1900 and idea of an English code. His speech on Women's Degrees. The *Lectures on Canon Law* dispose of the 'independence' claimed for the English Church; their masterly review of relations between Church and State and Papacy; in what sense he was a 'dissenter'; the merits of Canon Law.

Maitland's courtesy as a reviewer illustrated; his generous obituary notice of Stubbs; his acceptance of criticism; comparison of him with Freeman, Gardiner, Froude, Creighton, Stubbs; his position as an 'amateur'.

His greatest and last work was on Corporateness within the modern state; how this bears on the mediaeval attempt at a united Christendom and on the future reunion of Europe upon a freer basis; 'of that great day Maitland will have been one of the pioneers.' His own choice of an epitaph. 'The ideas of law are at bottom moral ideas . . . history is the tracing of ideas.'

Estimates of Maitland's work from America, Germany, France, Italy; especially Liebermann's. Need of personal and human element in historical production. His value as a model of style and method; therefore he can never be superseded, even when his results have been absorbed. Behind the writer and thinker, the man.

FREDERIC WILLIAM MAITLAND

LECTURE I

WHEN a certain incompetent person was undertaking to write the life of John Wesley, a wise man said to him, 'Friend, thou hast nothing to draw with, and the well is deep.' In my attempt to draw from the many wells of learning, wisdom, and wit to be found in Maitland's works, I must ask your help. You can help me by recognizing that in trying to cover so wide a range I must needs be discursive, even fragmentary, though a great writer loses as much as a poet by being dismembered; that I must touch on topics without fully explaining them; that I have to follow one who went into far fields of law and philosophy as well as history, and who went deep as well as far; that the very richness of the material is an embarrassment, for it can only be shown in samples.

I may also ask you to remember that it is better a pious task should be done inadequately than that it should be left undone because Professor Vinogradoff cannot do it by reason he is far away, and Mr. Fisher cannot do it by reason he feels too near. Lastly, I ask your sympathy in our plan to establish here in Oxford a Maitland Memorial Library for students, towards which the bibliography I have printed is a first offering, and your presence here is an encouragement and something of a pledge.

It has been said that history is only the substitution of one inaccurate theory for another inaccurate theory

without making any real advance. But not even an epigram can afford to be all malice and no truth. Put Maitland's *Domesday Book and Beyond* beside Freeman's *Norman Conquest*, put his Chapter XVI in the *Cambridge Modern History* by the side of Froude, put Maitland's *Lectures on Canon Law* by the side of Stubbs, and then ask, 'Does History not advance?'

But to the question, 'Does History advance?' a still better answer might be given by pointing to the change which has come over the method of historical research and historical exposition. Nowhere could this new method be studied so well as in Maitland. The first thing that strikes one in his handling of a subject is the (a) analytic treatment; but what one ends by admiring still more is a much rarer and a much higher power, his (b) power of synthesis or construction. (a) can be exemplified in his rule of reasoning from the known to the unknown; the tracing backwards which was so striking in Seebohm's *Village Communities*, but is still better done in Maitland's *Domesday Book and Beyond*, because in this latter there is no artificial simplification of the problem, no treatment of recalcitrant facts by the simple method of omission.

Sometimes his analytic treatment is seen in his application of a true comparative method, as when Glanvil is set first beside the other Anglo-Norman books of his century, then beside his Anglo-Saxon precursors, and his successor Bracton, then beside French customals, Roman Law, Canon Law.

Still more often does it come out in his acute sense of differences between things similar or apparently the same, whether contemporaneous like those local differences between English districts which he was the first to draw out from *Domesday Book*, or historical differences

like those which hang veils between us and the past, e.g. in our conception of justice, our conception of ownership. 'England is a land of manors; but in what sense? There are manors and manors.'—'Who in a twelfth-century vill owned the common?'—'What different conceptions of ownership prevailed in different ages?'—A tall hat is not the same to us and to a savage who wears it for decoration; and Roman law terms are used with very imperfect comprehension by Teutonic barbarians.

But the work of analysis by itself would leave only a critical and sceptical result; there is apt to be an intolerable quantity of this sack to a poor halfpenny-worth of constructive bread in some modern research.

Maitland had too much constructive imagination to be content to rest in a merely critical position. He always aims at visualizing the thing he is discussing. 'Testing an essoin' is four knights riding to see if Ralph is really in bed with his clothes off. The battle of Church against State is the case of Becket and the archdeacon accused of poisoning his bishop, or the case of Grosseteste claiming that children are legitimate *per subsequens matrimonium* of parents. The Pope's right of appointing judges means an archbishop of Canterbury overridden by one of his own suffragans, or worse still by his rival at York. The Roman contempt for English canonists is made to live again in a Pope's remark, 'When they held such a view, they must have been drinking deep of your English beer.'

This concreteness is beyond all others the salient quality of Maitland's style; he never leaves a thing till he can put it in concrete shape, and such is his eye for instances, and such the width of his range, that he rarely has to go to fictitious cases, to *X* or *Y*, but can give

chapter and verse from Richard Anesley or William Raleigh.

In this respect he resembles Macaulay, who had the same range and the same consequent felicity of illustration, or rather the power of bringing out his generalization by a happily-chosen, concrete case; but while Macaulay's instrument is too often the knob of the bludgeon, Maitland's weapon is the rapier's point. Hence even the most subtle discussions in him, the most delicate logical distinctions, are illuminated by this realization, are brought home to us by being turned into homely creatures of flesh and blood. 'What shall a thegn do with a house in the burgh? He does not keep it simply to take his daughters to the county balls.' The passage in the same book giving the ten reasons (pp. 518-19) which explain the large hide of 120 acres is too long to quote, and I can only refer you to it.

Has he to bring out the legal definition of incorporation? He does it by depicting the surprise of an undergraduate on learning that his college is a person, his boat-club is not. Has he to illustrate that legal fiction sometimes lags behind the actual growth of facts? He depicts the layman complaining 'we can't get our pavilion built without some lawyer's nonsense about trustees'. He has to enforce the conception of automatism in rural life; he does it by showing pasture rights apportioned to acres, one bullock to every 20 acres, and taxes apportioned the same way. He has to argue how a lord's rights over land might grow out of a much vaguer right than ownership; he does it by showing the lord coming round for his share of bread and beer, and no one asking questions about the soil or the minerals; or again by noting that in the word landlord,

the accent was once on a certain lordship, whereas now it is on the land, ownership having come out bright and intense, lordship having vanished. Are these instances difficult to grasp all in a moment? Then take this. The borough's origin as a moot-stow for the county is to be brought into relief. It is done by the light of one gem from a guide-book, 'In Cambridge the town-hall is obscurely situated behind the shire-hall.' Never did guide-book throw out so bright a ray since Bädeler's immortal words, 'Oxford and Cambridge both repay inspection. If time presses, Cambridge may be omitted.'

Can we ourselves learn from Maitland to be like him? Can we get the recipe for his magic? We can all draw from the well something, each according to our own powers; something of his width, his tolerance, his thoroughness, his ideality, even his lucidity. But can we learn to write like him, to bend the bow of Odysseus? I fear not; but if asked, then what else is there in his writing not already familiar in the best writers, what are distinctive marks of his style, I should find them first in the quality I have called his power of visualizing and his concreteness; and second in one which, to use his own term (for among his gifts he had the love and knowledge of music), we might call the use of a *leit-motif*, a recurring phrase ringing through the story, and keeping it in tune with the one dominant idea. A good example of this latter is the phrase *summa rusticitas*, which makes such play in *Township and Borough*, and brings the whole back to the keynote now and again. Let us see how he works.

Erasmus has thrown a stone at Cambridge; he had accused the *vulgus Cantabrigiense* of a *summa rusticitas*. Maitland picks it up, and when Maitland picks up a stone

it often turns out to be a diamond. He has been depicting the rural side of Cambridge life up to the seventeenth century; but he asks, 'was the *rusticitas* of this borough so exceptional; are they not all agrarian communities?' Then he has to explain the spirited common councillor, who in 1833 protested that the borough's land belonged bona fide to the corporation, and that they had a right to do what they pleased with their own. 'If a borough is a rural community at bottom, and a rural community in old days has no real corporateness about it, then would not our best comment on the common councillor's defence be *summa rusticitas*?' Or, again, the borough is full of vacant spaces, gardens, orchards, paddocks; it was *rus in urbe*, it had a strong smack of the farm-yard, the pig was ubiquitous, *summa rusticitas*. And once more with the voice of the common councillor these model lectures close; 'they can do what they please with their own; borough has much of rural township in it; *summa rusticitas*.'

Another of the chief constructive qualifications he has is his power of allowing for co-existent opposites, and embodying them in one conspectus just as they co-exist in real life. The free vill side by side with lordship in the Eastern shires of Domesday Book; the three or more rival constituent principles of the shire moot (rank, representation, special tenure); the several co-existent elements which are blended in the *relief* and the *merchetum*; the fact that freedom is measured along several different scales at one and the same time, i. e. by the test of portability, the test of nature of service, the test of wergild, so that the freemen of one scribe might well be the socmen of another.

'Through the crust of academic learning, through the crust of trade and craft, of municipality and urbanity,

the rustic basis of Cambridge is displayed. These hereditary enemies, these representatives of Town and Gown, have for once laid their heads together, when in 1624 Vice-Chancellor and Mayor meet to frame rules about the commons.'

'The incorporation in 1549 is recompensed for a piece of common, "but not the whole inhabitants of the town, who find themselves injured" to use their own words. Thus the corporation, the union of all, no sooner realizes its ownership than it is opposed to a clamorous plural *all* who find themselves injured.' So, too, ownership blends with rulership in the vague mediaeval *dominium*; as corporateness and co-ownership in the vague mediaeval *communitas*; and the whole moral of the book is, how hard but how necessary it is to disengage just those blended elements, to unravel those intertwined threads.

Perhaps the first thing to catch the eye in any one of his books is the happy pointed phrases. Take his book on Domesday.

'The most frequent service named is fold-service, "*soca faldæ*," the sheep must be in the lord's fold. It is manure the lord wants; the demand for manure has played a large part in the history of the human race.' Again, 'land is free from all custom except certain crimes. In what sense can a crime be a custom? In a fiscal sense; a crime is a source of revenue.'

'If we are puzzled by this labyrinth of soken, let us console ourselves with the reflection that the Normans also were puzzled by it.'

In township and borough what could be more pointed than its opening in the middle of a lawsuit of 1803 where the lordship over 1,200 acres of land was going a-begging? It admits us at once *in medias res*. What more pointed than the phrases which sum up the fourth lecture? 'Feudal geography lies all athwart the village

geography. This is the work of commendation, the work of those wonderful beings who were so free that they could "go with their land" to what lord they pleased. Norman rule freezes the commendation into tenure, but the frozen sea is billowy still.'

In Maitland these pointed phrases are not to be regarded as mere ornament, a sort of comic relief which might have been put in by a journeyman, like the porter's scene in Macbeth; but as a final step in this reconstruction, the clinching of the last rivet in the structure, the polishing of the crowning facet in the diamond, to gather up all the surrounding rays into one radiant point.

'We must not define a manor as having a court of its own, as having freeholders or villeins or demesne: all the old propositions fail us. . . . Domesday Book in fact might have been designed to deceive modern readers whose heads are full of "the manorial system".'

'The explanation of *ibi est semibos*, a half-ox, is not a monstrous birth, but that the land-unit of measure is the eight-ox team.'

'Sceptics about documents should sometimes remember kings and sheriffs did not let themselves be cheated wholesale out of valuable rights when the whole shire knew the facts.'

'Book-land and loan-land were always disappearing terms . . . a new word was wanted, that word was *feudum*.'

'The Danes freed the districts they conquered, but led to enslavement of the rest, for the cost of fleet and fyrd and burh fell on the peasant.'

'Progress sometimes goes by leaps, and our Anglo-Saxon ancestors did not get to the alphabet or the Nicene Creed by stages.'

'The German village had a solid core of individualism, even acute individualism.' I have taken all these from one book to show how thick they are sown.

What I wish to call attention to in his phrases is their point more than their mere wit, partly because wit is so apt to evaporate when we try to bottle it; and also because his witty sayings are always an integral part of his argument. That is why it comes so often in his Ford lectures; an audience needs, like Kant, to be startled out of its dogmatic slumber. Listen to him as we did ten years ago.

'Will you think me ill-bred if I talk of the fields of the town in which I live. What else have you left me to talk of? What fields has not Oxford made her own?'

'Walter of Merton himself had purchased strips in the Cambridge fields for reasons which I dare not guess.' The reasons were a possible transference of his College to Cambridge.

'Did it not seem to some of us, at all events in the Examination room, that the question about the origin of property in land was straightforward? On the one hand we had something to give away, "property" or "ownership"; on the other hand, there were various claimants, tribe, clan, village, family, individual. The only difficulty was where do you put your family, before or after the village community?'

'Maine's patriarch, who is a trustee, who represents a corporation, looks to me conspicuously modern. He may be a savage, but he is in full evening dress.'

'Oxford was founded by Membricius in the days of Samuel, Cambridge by Cantaber in the days of Gurguntius. We see the oldest of University sports was a lying match.'

'A borough's history is a masquerade; first a knot of heathen hidesmen, then a township of early English burh men, then a corporation of mediaeval burgesses which somehow becomes both *persona ficta* and a Tory dining-club.'

The comparison above made of Maitland and Macaulay must often recur to us; Maitland might have written the

paragraph on Doctor Nares at the opening of the essay on Burleigh: we know how he did enjoy it. No one approaches nearer to Macaulay's use of apt modern parallels, which by the nature of his work are generally parallels from literature or history of the past to bring out some point in the present, while from the nature of the case Maitland's are usually the lighting up of something mediaeval or archaic by showing its living 'correspondent', to use a Swedenborgian term.

"In the good old times" (we may fancy them saying) "carucate, hide, and pound were all equal"; conservatives would argue for "one carucate, one hide"; the financial reform party would raise a counter-cry, "One pound, one hide." Pressure would be brought to bear in influential quarters; in favour of their own districts the Witan would job and gerrymander and roll the friendly log, for all the world as if they were modern politicians.

'In the eighteen-seventies the "compound householder" was an agitating controversy. Was he to have a vote? He did not form one sharply distinct class, nor possess a compound house, but the landlord compounded for his rates. May not the villein be the compound householder of the eleventh century?'

'Anglo-Saxon chiefs begin to discover their own powers of booking land, though not awakened to the discovery by offers of gin and rifles.'

'The socmen in Norfolk will seem to have chosen, some the house of Godwin, others the house of Leofric, as light-heartedly as if they were but voting for the yellows or the blues.'

'The overlapping private jurisdictions must have had rules as intricate as those of our private international law.'

Let me quote three parallels from *Township and Borough*:

'The city of Washington is not in any of the United States of North America. Why not? Because it is

the moot-stow of the great Republic. The *civitas* of Cambridge is not in any of the hundreds. Why not? Because it is the moot-stow of the republic of Cambridgeshire, a phrase which is 800 years old.'

'In the Indian village community the symbol of right is a certain share of the produce rather than any theory of soil ownership.'

'In dealing with ancient communities our words and thoughts are too modern, too sharp, too unqualified. As Mr. Gilbert once suggested, it is too late for us to be early English. The outcome will not be so lucid, so graceful, so simple, as Maine's *Ancient Law*.'

The original question we set out to ask was this, 'Does History advance?' So far I have been answering our questioner as Solomon advised us to answer persons not wise; I have not worn my heart upon my sleeve, nor expressed what I feel more deeply about Maitland than any mere admiration of method however scientific, however new.

The real way in which I believe Maitland proves that history does advance, is in the noble conception he has of its dignity and claims, his conception of the spiritual side of it.

I should make bold to lay down two sentences as expressing this spiritual side:

(i) 'the writing of history is in some sort a religious act';

(ii) 'what men have done and said, above all, what they have thought,—that is history.'

(i) is a quotation that Maitland himself takes from Madox, that greatest of all antiquarian historians. Some one may say, What,—could so witty a writer be taking history in this religious sense? Why not? Is the devil to have all the good tunes, as Wesley said. Because thou art virtuous, shall there be no more cakes

and ale? It is a fallacy kept up in self-defence by the average man that dullness is akin to godliness, that lightness of hand means levity of mind, that heaviness and weightiness are the same things, and that solemnity, conventionality, orthodoxy, are three lovely inseparable sisters. The fallacy was, I fear, somewhat encouraged by writers like Robertson and Hallam, who knew better, but who too often mounted the grand manner and the high horse. Some one else may say, But does not Maitland himself announce by way of apology for entering on the preserves of Anglican polemics that he is a dissenter from this and indeed from other churches?

I care not, for if Maitland's view of life is other than fundamentally religious—I do not say ecclesiastical or hierarchical or dogmatic, but religious—then we must re-define the word. Would he have called himself agnostic? Then 'there lives more faith in honest doubt, Believe me, than in half the creeds'. Does Maitland sneer at even the crudest views of others, ever belittle religion as a force? How can a real historian be other than religious in the true sense? I believe it could be proved that even Gibbon was not half so anti-religious as he seems, or perhaps only wished to seem. To be anti-religious would be to take the side of evil against good, to believe in chance not in retributive justice, to ignore the formative share of religion in civilization, to refuse morality any part in politics, to deny that there is progress;—can any man, let alone a historian, take any one of these positions?

What is religion in history? A great authority, Lord Acton, after saying that the first of all human concerns is religion, then laid down these weighty words, that the historian to-day 'ought to be, as it is in his power to be, more rigidly impersonal, disinterested and just, than

the historians of a past age ; . . . to look with remorse on the past, and on the future with assured hope of better things. . . . not to lower the standard in history, lest we lose it in Church and State'. Who comes better than Maitland within this definition? But in that noble inaugural lecture by Acton on the Study of History, if there be a note missing it is that he does not emphasize enough the need of sympathy with the past if you would understand it; and if there be a note that has danger in it, it lies in his doctrine of judging the past by the moral standards of the present. Now sympathy with the past was just what Maitland brought to history; and he joined thereto a deep sense that moral and religious truth, like intellectual and political wisdom, express themselves in different forms to successive ages.

Nor must we forget his burning zeal in the cause of historic truth; the ardour, the self-sacrifice of his work; his profound confidence of an increasing purpose in the ages and a steady widening in the thoughts of men; the inspiration which he kindles in us because it burns within himself. In return for all this we can well be content to spare some of the usual manifestations of pious platitudes, or even some of the attempts to make a peep-show of Providence, to enlist it on the side of some narrow creed. *Non tali auxilio nec defensoribus istis Tempus eget.*

'To pursue the truth with all one's powers, and to leave the result in the hands of God,' this is the definition of the historian's duty which comes from the pen of the recognized pioneer and founder of modern investigation. In what point does Frederic Maitland fall short of this simple and inspiring canon laid down by Leopold von Ranke?

(b) The other ground on which I would base Maitland's highest claim is his humanity.

Let us take two instances from *Township and Borough*:

'The burgesses of a small vill divide up the common among themselves; ought we to call this misappropriation, or should we not abstain from hard words? for I do not expect to find in a village community of an old type any clear perception of the difference between theirs and its, i. e. between the concept of co-ownership and the concept of a corporation which is other than the members which compose it.'

'The boroughs in 1835 were accused of gluttony. This was a survival from a very old time when, if money was to be spent for the good of the town, there was but one obvious way of spending it. Those were not the days of baths, washhouses, free libraries, of electric lighting and technical education. The common good of the town is the common good of the township; and this means in Oxford in 1565 a banquet, or at least as in 1563 and 1571 "a small drinking", and even then it may be rather Puritanism than civic virtue that makes the "small drinking" triumph over the banquet.'

To get to the bottom of this matter let us take a crucial instance, the third essay in his *Domesday and Beyond*. In this last part, Maitland seems to intend a dramatic surprise. He is approaching 'that dreary, intricate, inhuman subject of Domesday measurements, the hide and carucate and sulung, the virgate, bovate, and yoke'. This seems to challenge him as a literary artist to call forth all his powers, and by a marvellous *tour de force* among his wisest wittiest pages are those which introduce and those which sum up this subject. Here, in its most startling manifestation, is the Midas touch which turns all to gold.

In the midst of what he justly calls a mass of the

most repulsive details we have hardly a page that is not illumined as in a flash of light, by some far-reaching generalization, some wonderfully apt parallel from modern life. The obvious thing to admire about these 160 pages of the most intricate calculations is the incredible patience and industry of the work; he has the temper of the scientist who repeats the experiment a score of times; tests every particle of the evidence, weighs $\frac{1}{1000}$ of a grain, and measures $\frac{1}{1000}$ of an inch. But with a statistical appetite and a zest for cryptic documents equal to that of Mr. Round, and with an untiring laboriousness that even Stubbs could not always keep up, he combines a freshness and animation that is amazing. The very drudgery seems to give him wings. All that weight of crabbed technicalities and minute criticism he carries like a flower. Indeed he rises from it all with strength renewed. What is the indwelling power that enables him to do this? It is that he has in the highest degree that divine quality, without which accuracy, industry, scholarship, critical acumen are all as nothing, the quality of human sympathy. *Homo est et nihil humani alienum putat.* So a Tribal Hidage, or a geld roll, a virgate and an acre, a charter of Edgar, a debate among the students in the Crib or in the place called Hell, an endorsement on a plea roll, a scribe's slip in grammar, these reveal themselves to him because he approaches them on the human side as human documents and human institutions. History can only advance nowadays by scientific methods, but the greatest of all these methods is to put oneself into the past and to shake off the idols of our own time; criticism, analysis, tabulation, statistics are the instruments of modern research; but when they have done their work, it must be readjusted and interpreted by a still higher faculty,

the faculty of imagination. Imagination is the only key that can unlock the past.

‘To make discoveries . . . we must form new habits of mind, and the thoughts of men in the past must once more become thinkable to us . . .’

This is what gives the peculiar quality to Maitland’s humour. I suppose the chief superiority of humour over mere wit is that the former has its source much deeper. It springs from a profound tolerance, a sympathy which knowing all can pardon all and tolerate all, in fact, from the sense of a common humanity; and at that depth, as we see in Thackeray, the founts of laughter and of tears are near together. *Sunt lacrimae rerum*. And is not Falstaff the greatest creation in all literature because he mingles without discordance the two sides of human life; and because when the chief of good fellows ends his career, in the pathos we are made to feel there is no incongruity.

This is why Maitland’s humour is not a mere ornamental adjunct, still less an impertinent intrusion of an irresponsible self into all subjects and all moments however inappropriate, but his humour is a real help to the full grasp of his argument. It generally comes at the end therefore of an argument, to balance, to supplement, to sum up in a concluding formula; it is the summing-up of a wise and kindly judge who takes into account all the extenuating circumstances, and as he looks at the culprit feels ‘there, but for the grace of God, stands Richard Baxter’.

His humour is a lambent play throughout the whole of his work, giving a subdued glow often discernible only by those who have eyes to see. His jesting is never knavish, though probably much of it sleeps in the long and furry ear of the British public, for much that

he says is only *φωνάντα συνετοῖσιν*, intelligible to the intelligent.

For a specimen of Maitland's humour in a continuous form perhaps the best example is the Introduction to the *Mirror of Justices*. Here he has a subject technical, obscure, intricate in the highest degree, a treatise on the arcana of mediaeval law, all complicated by an apparently insoluble riddle as to the book's authorship, purpose and value. By a series of masterly narrowings of his circle, we are led to the hypothesis of a legal romance by a smart young man who is amusing himself and laughing in his sleeve, 'who cannot be said to be making a serious attempt to restore the law of a past time, for he is not making any such attempt, he is simply enjoying himself; whose book is impersonal, not because it is scientific or because he is modest, but because he is fantastic and irresponsible; who proposes to revive the ordeal, and states that English laws require consent of Pope or Emperor;—in order that he may turn round and laugh at you if you take his words literally; who, in fine, combines the parts of lawyer, antiquary, preacher, agitator, pedant, faddist, lunatic, romancer, liar, especially these last two, romancer and liar.' . . . 'It is an ambitious young man seizing at the time the great judicial scandal of 1289, when Edward I had to put up all his judges on trial, and using it as an occasion for a squib, a skit, a "topical" medley, a variety entertainment of Bracton mingled with crotchets and myths, and decorated with tags of Canon Law. It may be treated as a series of themes on leading motifs, the *lex talionis* motif,' and so on. Pursuing this idea Maitland plays with it like a juggler. Now the author is debited with a list of statements that only require the insertion of the word *not* to render them true. Now he is convicted in the

wondrous tale of the forty-four judges hanged by King Alfred, of drawing eight of them from London streets and churches (Watling, Billing, Cuthbert, Dunstan, Botolph, and such). Now he is credited with being beholden to none of the usual sources, but 'quite able to do his own lying for himself', and ignoring the *Leges Edwardi* and *Leges Henrici*, Hoveden, Glanvil, and the rest in his 'magnificent scorn of corroboration'. Now he is twitted with assuming the garb of a preacher in laying down that Parliaments are to be held twice a year for the salvation of sinners' souls, or that a clerk has no more right to sin with impunity than a layman; 'a proposition which to Becket would have hovered between truism and heresy.' When he tries to introduce religion into law by classing offences as sins real, personal, and mixed, or by proposing a form of indictment against one Nolling for feloniously being circumcised and adoring Mahomet, he is portrayed as like an aspiring usher picking up cast-off phrases of Doctors of Canon Law. All the bad law of the book, all its mad history, all its wild political theories are gathered up with merciless vigilance by Maitland, and made to converge to the foregone conclusion that the man is not serious, that he is artfully obscuring his own trail and cutting across the prejudices of every single class of society.

Another instance in which the humour runs through the whole of a big subject is the paragraph in *Domesday Book and Beyond* solemnly headed 'OF BEER':

'Who shall fathom that ocean? When a Canon of St. Paul's allowance was thirty gallons a week; when a monk grumbled if he got less than a gallon a day, and this meant the yearly produce of two to three acres of barley. And if we must not make teetotallers of our ancestors,

neither may we convert them to vegetarianism. Their pork and poultry, fish and eels, cheese and honey will relieve the arable of some of its burden,' and so on.

Or take those sayings which close a discussion :

'The economic history of our peasantry is not continuous. It is divided into two parts by the red thread of Norman conquest. That was very catastrophic whatever William strove to make it. The English lords may have been allowed to redeem their lands, but all that the common men got were very uncovenanted mercies.'

Again, 'In trying to give an equitable answer to his question, How many teams should this land bear? the villagers fell back on archaic fiscal facts. Now a mystery of iniquity is bad, but the mysteries of archaic equity are worse.'

Again, 'The Norfolk jurors gave 100 of their villas as being each a league long and a half league wide, a delightfully symmetrical county. But what if they are giving us not square measure but extreme diameters? If a clergyman now told us his parish was three miles long and two miles wide, we should not accuse him of falsehood if we found it was approximately a right-angled triangle, and contained about three superficial miles.'

I take another example from a more modern work; Chapter XVI of the Reformation volume of the *Cambridge Modern History* introduced Maitland in a new light to the ordinary reader. What an extraordinary vivacity and alertness there is in the whole article; no one could open it at random and read three consecutive sentences without saying, 'aut Maitland aut diabolus.' By accident I did so open it at a part I thought was by another writer, and found myself wondering who is this on whom Elijah's mantle has fallen? A delightful sort of light touch which is never levity is always his; a sort of ripple on the surface which is not laughter nor jocosity, but a peculiar brightness and gaiety. However

learned, however lucid, however thoughtful, none of the other articles in that volume have this quality; and how many in all the volumes? No, 'that strain we heard was of a higher mood.'

To take another; the *Et cetera* article in the *English Historical Review*, Elizabethan Gleanings:

'From 1558 to 1800 our kings' title has been "by the grace of God, of England France Ireland King, D.F., &c.", but Elizabeth's use of it was a stroke of genius, for 37 Henry 8, c. 17 had said the headship was annexed to the kingship by the word of God. . . . The design answered; the Papacy reassures English Catholics that they might subscribe to the &c. title, because Catholics need not understand it in the heretical sense. Thus the &c. equals "and, if future events shall so decide but not further or otherwise, of the Church of England and also Ireland upon earth the Supreme Head".'

Again, he is describing how Scotland by 1560 was entering upon the stage of modern history, and how she was called upon for some years to play the foremost part in the great drama, and how her entry was late and sudden.

'But the historians of Scotland will also warn us that the events of 1560 leave a great deal unchanged. Faith may be changed, works are much what they were, especially the works of the magnates. The blood-feud is no less a blood-feud because one calls itself Catholic and another calls itself Protestant. The "band" is no less a "band" because it is styled a "Covenant", and makes free with holy names. A king shall be kidnapped, and a king shall be murdered, as of old; it is the custom of the country. What is new is that far-sighted men all Europe over, not only at London and at Paris, but at Rome and at Geneva, should take interest in these barbarous deeds, this customary turmoil.'

How pointed this and how witty; and is it the less true for its point and its wit? Do not these qualities enhance both our apprehension of the argument and

our sense of sympathetic insight in the writer? There is something too of a poetic quality in the literary grace of the style, as there must be in all true literary style, and a note of poetry in this summary of the long drama of a nation's story, like the subdued note of inevitableness which closes a Greek tragedy.

In this chapter his old skill in happy phrases has not deserted him. 'Pinkie; that decisive defeat of the Scottish host and the Britannic idea.' . . . 'London too, Bonner's London was Protestant, and London might be worth an abolished mass.' . . . 'Catholics suspected Elizabeth's husband would be head of the Church if not head of his wife.' . . . 'The Coxian Church of England might be an erring sister, still she was a twin sister of the Knoxian Church of Scotland.' . . . 'Rome was long unwilling to quench this plausibly smoking flax.'

But it is as a new contribution to political and narrative history that this chapter challenges us. Far the best examination extant of Elizabeth's title and its importance, for it is the only one which takes account of canon law and common law, as well as Henry's will, the Acts of Parliament, and the various political considerations, nevertheless it is all got into three-quarters of a page, a model of compression.—Here too we have the best examination of Elizabeth's theological views, because it takes account of all the various currents that affected her and yet decides that at crises she was probably 'swayed rather by her religious beliefs and disbeliefs than by any close calculation of loss and gain'. What? Elizabeth's ultimate motive the religious motive? and Maitland the man to see religion where others see none? So it is, and I believe it to be the truth. He is the first writer to disprove the old story accepted even by Ranke that Elizabeth did not reject Catholicism till Paul IV declared

England a Papal fief and her an usurping bastard : the only writer who has seen into the curious events in Parliament, Feb. 9 to April 29, 1559, and thus the only writer who sees all the aspects of the change of title from Supreme Head to Supreme Governor ; and who gives a notably temperate and impartial view of the passing of the Uniformity Act, steering dispassionately amid the thorny questions of Edward VI's Second Prayer Book, and the Black Rubric.

Let any one compare Maitland on the disputation of March 1559 with Froude and with Lingard. No one could guess here what Maitland's own views on such things were, and this suggests (1) what a fair mind he had, and how much his anti-sacerdotal opinions lay on the surface and were the result of mental environment and perhaps a reaction from extravagances around him in early years. A man may be anti-sacerdotal or anti-clerical, it is a matter of degree and proportion, and perhaps somewhat a question of words ; but a man who declares himself anti-religious is a man wanting in historical judgement, a man who shuts his eyes to facts,—the last things that could be said against Maitland.

(2) Extremes meet ; one of the most appreciative studies of Puritanism is the work of an advanced High Churchman, a loving appreciation of Chillingworth comes from an historian who is an Irvingite. The contrast is only an apparent one ; the two have one end and object, but only differ as to means, they 'agree in everything but opinions' as Carlyle said.

No historian who feels deeply and sees deeply can fail on any great historic problem to come to conclusions that in the main will convince a reader who reads honestly and with an open mind. Bit by bit history wins firm ground from that Serbonian bog of eccle-

siastical controversy 'where armies whole have sunk'. Modern Catholic writers no longer defend the bad Popes; to Mr. Armstrong's outspoken regret, the Borgia's vices are now become almost as tedious as other people's virtues. It is time that even partisans should agree as to the facts at any rate of the Elizabethan Church Settlement; and to this agreement Maitland has contributed most.

To describe this Elizabethan Church Settlement in words both just and few is hard indeed, as Maitland says; but has he not effected this in the masterly summary (p. 570), or again in the sketch of the Articles, and of the Vestments controversy in its relation to foreign policy and the Council of Trent, or in the acute analysis of the elements of early Puritanism, in which he brings out what no one else has done?

Even on the obscure and often examined episode of Amy Robsart, Maitland throws light by noting that De Quadra who wrote the letter speaking of a design to murder her communicated to him by Cecil, was strongly suspected of being in the pay of the Guises who just now were trying to get Philip to drop Elizabeth; secondly, that as to the postscript stating that the Queen said Leicester's wife was dead, we should do well to remember that a postscript is sometimes composed before the letter is written.

The whole chapter is an amazing instance of condensation, as the bibliography at the end shows. As an instance of the amount of research compressed into this article we may take the sentence which condenses a learned article into some two dozen words; 'a new and happy *et cetera* was introduced into the royal style, and so seemed to hint, without naming, a Headship of the Church.'

But Maitland was the last man to have wished himself uncriticized. His artistic sense, his sense of the ludicrous, as well as his high standard, would have led him to deprecate a picture of himself in which the high lights should cast no shade. Perhaps, therefore, we should not leave this chapter without admitting that it does exhibit traces of what some might call defects in his style. Spots in the sun, we are told, are signs of the energy of its activities. His skill in word-coining sometimes leads him rather far; he likes to tinkle these new terms; 'Henricanism' is hardly a graceful word; 'a bill which went the full Henrican length in its Caesaro-Papalism.' It reminds one of the relish with which in his *Domesday* he turns over once and again the phrase 'tenurial heterogeneity of the burhs'; an ordinary man would have been content to say 'their dependence on several lords at once', or 'their patchwork of lordships', or some such phrase. But if he creates new terms it is because he has created new ideas, and even these quaintnesses help to fix his idea before our eyes.

He has sometimes that last infirmity of a brilliant style: over-allusiveness. It is not from any preciosity or affectation, or from any obscurity of thought, but simply from the many facets of his knowledge and interests and the high level of both which he assumes in his readers. Thus:

'Archbishop Parker was consecrated. The story of a simpler ceremony at the Nag's Head Tavern was not concocted till long afterwards; it should have for pendants a Protestant fable which told of a dramatic scene between Elizabeth and the Catholic Prelates, and an Anglican fable which strove to suggest that the Prayer Book was sanctioned by a synod of bishops and clergy.'

The Nag's Head scandal every schoolboy knows, at least the every schoolboy of Macaulay. The 'An-

glican fable' was an imaginary convocation created by Canon McColl, and smilingly pulverized by Maitland in the *Fortnightly Review* in 1899. But what schoolboy knows the 'Protestant fable'? How many even of this audience?

Again, take these sentences: 'The attempt to Scoticize the English Church, which failed in 1660, and the attempt to Anglicize the Scottish Church, which failed in 1688, each of these had its century.' This might be set as an examination question; I make a present of the suggestion to the junior Fellows of All Souls. Our schoolboy could perhaps write notes on this passage: 'Andrew Melvill's language has been compared to Gregory VII's, for your new presbyter in his lust of usurped dominion is but too like old priest,' but would even Macaulay's schoolboy get at more than half the scandal implied in the following allusion?—'the worse treatment meted out to Puritan clergy than to Spanish refugees by Elizabeth's misogyny, which made one welcome for Mrs. Matthew Parker and another for Madame la Cardinale.'

But, not to close on a discord, one cannot read that Chapter XVI after reading other English books on the period, one cannot even read the half page which summarizes these fourteen years and closes the chapter, without asking oneself whether, in losing Maitland, the English world has not lost one who might have made a great narrative historian, as he already was a great investigator of institutions and interpreter of the growth of ideas, the earnest exhorter of his own countrymen, the pathfinder of future research, and the prophet of destined reforms. It is in these last characters that we have still to consider Maitland, and have still one lecture in which to do it; a lecture that must be devoted to

Maitland as the converted lawyer, or rather the alchemist who could transmute law into the most unexpected and precious products, who could precipitate from that refractory and unpromising ore the gold of historical and political truth, and even something of prophetic wisdom ; for in his deep research into the ideas which lie at the very basis of our society his insight did at last attain to something of prophetic strain.

LECTURE II

PROFESSOR VINOGRADOFF, in that recent notice in the *English Historical Review*, which opens in a way worthy of the subject, has told us that it was early in 1884 he first met Maitland. He has not told us it was he who set Maitland on to what became his real life work. But it was so, and Maitland loved to tell the story. The papers which begin with one on the laws of Wales, 1881, show us that Maitland's attention had been turning in that direction already. Thus there is a paper of Maitland, 1882-3, which shows more than half-developed already his wit, his acute sense of terminology, his subtlety in distinctions, his pointed and polished style. It is interesting also as showing how far back he had begun the special studies which went to make up the *History of English Law* thirteen years later; and how early he had acquired his cardinal principles of research. The paper is a sketch of the development of the modern definition of *murder* from the Anglo-Saxon *mord*; it is particularly skilful (1) in tracing the work of three legal fictions, namely, that the killing was a treason against the feudal tie due to the king, that the slain man had had special peace granted by the king, and that the assault was of the nature of an ambush; (2) in tracing the influence of Canon Law through the text in Exodus (xxi. 14), 'if one presumptuously come upon his neighbour with guile and slay him' (Vulgate); (3) in pointing the lesson not to read back our modern

preconceptions into ancient law, which looked only to the social rank of all parties and to circumstances of the place and the season, whereas to us it is natural to make all depend on the intention of the act.

But his 'conversion', if we may borrow a term from the theologians, and if (a larger 'if') we may apply such a term to a lawyer, his conversion was not complete yet. When I speak of a converted lawyer I use the term in a purely professional sense, the sense in which we may welcome back to the historical fold one who had been straying awhile into the succulent pastures of practice and fees. A converted lawyer is peculiarly welcome, not merely because so few lawyers do get converted, but for other reasons also.

(1) The legal mind has that hardness which takes polish well. The lawyer brings to historical research a sense of evidence and a power of testing it; he brings too a sense of the pervasiveness and the tyranny of ideas such as the idea of Tenure in the Middle Ages, and the idea of Natural Right in the seventeenth and eighteenth centuries. He is on guard against the 'idols' of his own tribe. Ordinary men are scared when some one in a wig and gown tells them they cannot do this or they must do that; they think there is a real ghost behind the sheet and candle. The professional is not taken in; he has played the game himself. The best of gamekeepers is a converted poacher, and the best historians of law have been converted lawyers.

(2) 'The history of law must be the *history of ideas*.' Now the history of ideas is not only the loftiest and most difficult kind of history, but it is that which must more and more inspire and elevate the history of the political or narrative kind, and give it a *raison d'être*, a purpose and a clue. This philosophic kind of history

is not so obvious as some other kinds such as military, diplomatic, biographical or what is sometimes called political history; but it has a permanent importance at least as great as any of these, it does more to vindicate history as a living lesson, and it is of incomparably higher educational value.

There is a lofty region where religion and history meet, and another lofty region where law and history meet. To the former Maitland pointed the way in his chapters on Canon Law; to the latter, in his prefaces and works on legal history. Such regions are but little explored; the way is rugged, the air too rarefied for ordinary men to breathe long. But it is in these high table-lands that the great streams take their rise; and we must face the ascent if we would treat history as an applied form of philosophy, as something more than a maze without a plan.

No subject is so 'immersed in matter' as law. That is because its practical side is so overwhelming. The result is that it is apt to be accepted as it stands, and not treated as a growing thing. It is so dogmatic, 'a lawyer must be orthodox, else he is no lawyer; an orthodox historian seems almost a contradiction in terms.'

(3) In the border-land where law and history meet, and each throws new light on the other, (*a*) look at what Maitland has done to make Bracton and Coke intelligible and therefore interesting instead of repulsive. That is the light history can throw on law: 'the law of a nation can only be studied in relation to the whole national life.'

Look again (*b*) at what Maitland has done to make the Norman Conquest significant and therefore interesting beyond any question of palisades at Hastings, or to make Elizabeth's statute-book interesting beyond the

most spicy scandals about her flirtations. That is the light law can throw on history. 'No one should presume to write on Mediaeval England without studying the Year Book.' After a striking review of what the life of a shire might mean, and what the business of a shire was, we realize what it means to say 'Truly men have to labour much and to journey far in the work of justice. It is of men thus drilled that Parliaments can be made.'

(4) Cicero says a great lawyer always asked *Cui bono?* who profited? The historian of law cannot but have in mind the practical end, whom do I want to profit? He labours among men of the past that men of the present may see clearer, may judge better; may look on their own law systems with newly opened eyes, may see legislation is an art and should be the highest of arts, may introduce reason into it in place of haphazard party tinkering and makeshifts. Any one who wants to get an idea of Maitland's handling of a present-day political subject apart from any technical questions of history should look at his article on the German Civil Code.

It begins with discussing the relation of a nation's system of law to that nation's character. Beside the old picture of the German as 'an unpractical, sentimental being, looking out with mild blue eyes into a cloud of music and metaphysic and tobacco smoke' he sets not their great Army but this greater exploit of their new Civil Code which took from 1874 to 1896. He shows how the need for it all comes out of the past facts of European history, how England alone had a central law system as early as the twelfth century, and is paying for her legal precocity then by legal backwardness now. 'Are we facing modern times with modern ideas,

modern machinery, modern weapons as the Germans are; some of our ideas are antiquated, some of our machinery cumbrous, some of our weapons I would liken to blunderbusses apt to go off at the wrong end; what of our Real Property Law? The true historic sense is that which most dislikes a survival of the unfit; 'a modern man in a toga, a coat of mail, a chasuble, is not only uncomfortable but unlovely.' We never since 1885 have dared to say an old rule is rubbish and must go to the dustbin; 'just you clean up this mess' is the hardest of all commandments. This is all due to our lack of imagination. Yet there may be hope for us; the German mess was worse than ours.

Look at the range of view here presented, the new ideas suggested, the profound criticism yet without exaggeration, the just appreciation of things both English and foreign;—all in a magazine article of a few pages, an article that is quite as readable and might have been as deservedly ephemeral as most magazine articles.

Maitland's attitude to law is professional but not too professional; to him it is neither 'the perfection of reason' that it was to Coke, nor the ass that it was to Mr. Bumble. This attitude comes out best in the preface to *Bracton's Note Book*:

'Englishmen have never admitted that none but a lawyer is fit to judge his fellows.'—'The growth of a class of professional lawyers if it did much good, also did some harm.'—'What English law wanted and what it got from abroad through Rome was rationalism rather than Romanism. Bracton got principles which gave him a standpoint from which a wood could be seen, not merely a quantity of trees. . . . English lawyers treated Roman Law as the Church does the Apocrypha; it is instructive rather than authoritative. When Bracton does borrow from Roman Law, it is chiefly suggestions

to patch up some small difficulty; "imperial Caesar dead and turned to clay, May stop a hole to keep the wind away."

Law is the creature of kingship but eventually its master:

'History had decided that English kingship should be a strong kingship; but a strong kingship is not absolute monarchy. The kingship was to impose law upon itself; self-imposed law is the supreme feat of omnipotent Deity. Non est impotentia sed summa potestas, Magna Dei gloria magnaue potestas.'

All this preface has a gay and delightful air; he seems to rejoice to show that even the dusty purlieus of the law can be made bright and airy by letting in light; like Spenser's heroine he makes a sunshine in that shady place. This comes out with much that is of autobiographical interest in the last sentences of the preface.

'When I say I am not satisfied with it, this is no common protestation. Down to the last moment I have found so many faults in my own work that I cannot but believe that there are many yet to be found. Down to the last moment I have been learning many things about the law of the thirteenth century which I ought to have known at the outset. For sins of omission no excuse should be offered, for none should be accepted. But before I am blamed for having done less than might have been done in the way of collating rolls, giving various readings, making indexes and notes, it will, I hope, be remembered that this has been a private enterprise. I have often had to count the cost; also to reflect that another day in the Record Office or the British Museum would mean another hundred miles in the train. . . . I am sure there must be more to be learned about Bracton's life than I have been able to discover; at this eleventh, nay, thirteenth, hour I find what I believe to be his marks on a roll of King John's reign. . . . But . . . it seemed the *Note Book* would

remain unprinted for many years unless some one would make an edition of it such as could be made at his own cost. Perhaps I was not the man for the work, but I have liked it well.'

'English law is case law, the Plea Rolls contain the ultimate authorities of our law. What would we not give for a book by a mediaeval lawyer containing a selection of such cases? especially if that lawyer were a great judge and made his selection while the law was still flexible. Such a book chance has preserved to us; it is *Bracton's Note Book*.'

The dramatic instinct of this drawing up of the curtain on Bracton comes out again in the ingenious form of a tour through the places most noted in the book; they are Devonshire villages and manor houses held by Devonshire names and the subjects of cases decided by William Raleigh, himself a Devonshire man, and interesting to a young protégé of his, also a Devonshire man, and in fact no other than Bracton himself.

'An effort has been made to state the evidence impartially, but I am of course happy in believing that Bracton's work was in my hands; and my eyes may have been shut to facts which make against this pleasant belief. Let some one else now go through the book to disprove me. Meantime, is not Bracton entitled to a judgement, a possessory judgement? "Et ideo consideratum est quod Henricus recuperavit seisinam suam salvo iure cuiuslibet."'

The exposition of law requires just that combination which Maitland brings to it of close accuracy which we call scholarship, with a broad absence of pedantry; for as dirt is matter out of place, so pedantry is learning out of place.

'He will not say with the immortal Bartolus, "De verbibus non curat iurisconsultus"; nor, on the other hand, will he presume on his readers having a morbid appetite for abbreviations, or expect them to face that

not
pedantry.

repulsive mass of pothooks and hangers called Record type which is so dear to some of the learned.'

Maitland's plans were formulated as early as 1888 in his Inaugural Lecture, 'Why the *History of English Law* is not written.' He pointed out (1) the unique character of our records for mass, continuity, minuteness; (2) the unique fact of our centralized administration with the consequent result, a wonderful unity with no 'provinces' to need separate study; (3) the great bulk of rolls still unprinted; and (4) the reproach that foreigners are doing it for us. 'I will bring upon them a nation from far, a mighty nation whose language they know not.'

'Think for a moment what lies concealed within the hard rind of legal history. Legal documents are the best, often the only evidence we have for social and economic history, for the history of morality, for the history of practical religion. On such a point as village life the evidence is inexhaustible, but no one will extract its meaning who has not the patience to master an extremely formal system of pleading and procedure, who is not familiar with a whole scheme of actions with repulsive names. There are large and fertile tracts of history which the historian has to avoid because they are too legal for him.'

That history of law is not written because (a) it has not been studied comparatively—'we have had a traditionally consecrated ignorance of French and German law'; (b) because our own past law has been stretched and interpreted by modern courts to suit modern facts, and 'what the lawyer wants is authority, the newer the better; what the historian wants is evidence, the older the better'. It was this lofty conception of what required to be done first that led him to work at state documents, like the Parliament Roll of 1305 (a harnessing of Pegasus to a cart), or to work at the Year Books. In the last he has shed a wholly new light on several

subjects; the Council, tallage, the practice of petitions, the early working of Parliament, the importance of records. One almost grudges so much brilliant work wasted on some of his material; it is like finding an electric light kept on in a cellar.

This helps us to understand why his work was incomplete. He felt he could not complete it till the materials were complete. He could not carry on his *History of English Law* till the Year Books were all published. He could not carry back into Anglo-Saxon times his Domesday Studies till the material had been got into useable shape by the combined work of local experts. Once he thought this might take a century; as in praising Mr. Stevenson's edition he said that a final work on the Anglo-Saxon charters would require the joint labours of five men, a palaeographer, an annalist, an expert in language, an expert in law formulas, and a tramp to beat the boundaries. Perhaps the standard that was set was not too high. But the result has been that in our gross national neglect till recently of our unequalled store of records, we have wasted a chance that does not come twice in a century of seeing a full use made of a uniquely qualified writer. It is as if a mute, inglorious Newton had been wasted by being born before the telescope was invented. It would be something if in Oxford we could do even a little to remove this reproach.

We can see why the central subject of his great book, the *History of English Law*, is the Law of the Angevin Age. The material from 1154 to 1272 had been so worked up that the time had come to make a summary of the results. And if some of the attention hitherto given to political questions of Parliament and taxation be turned to the history of such subjects as tenure, ownership, contract, trust, very unexpected light will be

1066
1066
thrown on history; 'sometimes the solution of a vital problem will turn on what looks at first sight like a technical trifle.' For example, in the struggle between Latin, French, and English, 'it is not a paradox to say that the year 1166, the year of the assize of novel disseisin, is more decisive than 1066, the year of the battle of Hastings, for this assize gave to every man dispossessed of his freehold a remedy in a royal court, a French-speaking court, and thenceforth the victory of French law is secure. This is important in history, for language is no mere instrument which we can control at will; it controls us.' And the victory of French is one of many causes which concurred to produce the effects which we usually trace to the simple fact of the Norman victory at Hastings.

The historical sketch in the first six chapters of Book I of the *History of English Law* will be read as a whole by every thorough student, for the handling is superlative. But students sometimes fall back on the comparative, and in that case they would read Chapters V and VI on the age of Glanvil, and the age of Bracton, and supplement with Maitland's chapters on Anglo-Saxon and Norman Law out of *Social England*, vol. i. Even if they read only these two last chapters they will not escape imbibing much wisdom and learning, two things which, like wit and truth, go together in Maitland but rarely elsewhere.

Another example of technical discussion issuing in the discovery of a new and important truth is the discussion at the end of Book I as to the definition of the borough, is it corporate or not, which after twenty pages of close reasoning concludes that the communalism we see in mediaeval life was not original or spontaneous therein, but men had to be drilled into it by the pressure of

royal justice. What the State did then the State could and perhaps should do again now.

It is impossible to attempt even the briefest enumeration of the points which are at once new, important, and well put in the two volumes of the *History of English Law*. The greatest living authority, Brunner, speaks of the book as excellent, and up to the fullest height of recent research. The Law Faculty in this University have expressed their opinion by eliminating the work from the list of books necessary for their School. 'Who shall decide when Doctors disagree?' But when the Doctors are Doctors of Law, the bewildered layman may feel tempted to fall back upon the phrase in which a Minnesinger expressed his dismay at the election of a young Pope, 'Gott, hilfe deine Christenheit.'

If one had to select and were confined to one-seventh of the whole, I should suggest the pages 88-114 on Roman and Canon Law, the chapter on the Age of Bracton, the pages (i. 210-18) on Tenure, the section on the Clergy (i. 422-40), the pages (i. 495) on the Crown, twenty pages on Boroughs at the end of vol. i, fifty pages on Seisin at the opening of vol. ii, especially 46-79 on the Possessory Assizes; the thirty-four on Marriage (i. 362-96); some 200 pages out of 1,400. But the whole book is a mine. Now by this object-lesson you can understand why I threw over the plan in these lectures of a 'route-book'. To take Maitland, of all men, with his intensely living, graceful, cheerful personality, and saw it into lengths or even into blocks of a pocketable size, to desiccate him into a route-book, to ticket and docket the parts that would pay to read, and the parts to skip, would be a crime against literary decency, and what will appeal with still more force to an audience, would involve not two lectures but a whole course.

The sections in Chapter III of *Social England*, vol. i, on English Law in the eleventh and twelfth centuries should be the model of all who are misled into writing for a popular encyclopaedia, a crime which brings its own punishment anyhow, but when one compares the way in which it may be done and the way in which Maitland has done it with one's own contributions and (may I add?) those of one's friends, then surely the punishment is almost too severe. And as the person who contributed the most in quantity to those well-meant volumes, I hasten to say that quantity and quality are very different things, and to advise you, if you wish to turn that platitude into a startling truth, to refer to any of Maitland's pages, 274-98, in vol. i, or to the chapter in vol. ii on the Common Law under Coke.

Law is the point where life and logic meet. This is the motto on which his law books work. In the Introduction to the first of the Year Books issued by the Selden Society (1 and 2 Ed. II) he gives (1) a characteristically vivacious analysis of the nature and value of this stream of law reports which began to flow in 1285, and is now going on at Edinburgh and Dublin, at Boston and San Francisco, at Quebec and Sydney and Cape-town, at Calcutta and Madras; (2) illustrations which form a pointed commentary on Coke's description of law-reporters as 'grave and sad' men; (3) a wise eulogy of the technique of law as 'a wonderful feat of mental architecture'. English law was tough because it was technical, and by its toughness it survived Tudor and Stuart despotism; (4) an explanation of their value as material; 'some day it will seem a wonderful thing that men once thought they could write the history of mediaeval England without using the Year Books.'

'They come from life, and some day they will return to life at the touch of some great historian.' (5) Lastly an astonishing piece of laborious work of fifty-five quarto pages, a grammar of the French language as used in the Law Courts; of which it is enough to say Meyer sets it as a textbook in Paris.

One is often asked, recommend me something short which shall be typical, interesting, important, but above all short; something for the plain man to read. Now the plain man is not always an attractive person, he is so very plain, and he wants everything to be made so very plain. But if one had to choose for this person among Maitland's distinctively legal works one might send him to the *Pleas of the Crown for Gloucestershire, anno 1221*. Though Maitland issued this as early as 1884, and much of the technical part was incomplete when tested against his own later results, yet it contains many of his best ideas in the germ, it is complete in itself, compact, sparkling, and it makes the history live. 'English law is English history. The foreground is crime, even vulgar crime, but crime is a fact of which history must take note'; and this handling of it shows us local government, police, frankpledge, jury, the duel, benefit of clergy, all in actual working. Itinerant justices become real men; Martin Pateshull, Bracton's greatest of all judges, wears out his colleagues; 'for he will begin to sit every day at sunrise, and go on till nightfall, Sundays included.' The sheriffs had had fine pickings since the last iter seven or more years ago, eighteen marks from a township because a boy was accidentally drowned in the mill, and so on. An iter was unpopular with all classes; but judges to take civil assizes were welcomed. Criminals generally break out of prison or bribe their way out. The township governs now a

singular now a plural verb; it is semi-corporate; and 'some deep roots of representative government are laid bare by these rolls'. The final cause of justice is money; 'William slew Wulfnoth . . . hanged . . . chattels, 6d;'
iustitia est magnum emolumentum. Of some 250 murderers only one here and there is hanged, most have fled the country. We see Englishmen use their knives freely, and we see that the English beer had worse effects than inspiring the unsound opinions on law which Innocent III ascribed to it.

A lively journalist said lately 'those College tutors in Oxford have ample means and unlimited leisure, and yet produce nothing'. Now, leaving Mr. Armstrong, Mr. Fisher, Mr. Davis, Mr. Oman, and others to deal with this charge of non-production, we can at least say that the same critic, even if his creative fancy could have added imaginary health to imaginary means and leisure in Maitland's case, would have had to allow that the 150 entries in this bibliography do represent something in bulk for twenty years' work. But far above the bulk is the distinction of his work; who can mistake a paragraph of his for another's, who can be content with other writers after him? 'Too brilliant—fatiguing,' I have heard it said. 'Too brilliant?' Well, when George III heard Wolfe was mad, he said, 'I wish he would bite some of my other generals.' A budding historian might do worse than get bitten by Maitland. Can we name any one since Gibbon who has so combined the two sides, each indispensable to the really great historian, but so rarely combined, the scientific and the literary, the analyst and the artist, the Stubbs and the Froude? An editor of Court Rolls and Crown Pleas, a writer on law, and obsolete law at that, seemed

entitled by prescription to be voluminous, repulsive, unreadable. But Maitland never lets his material master him; he wrestles with it till it reveals itself and yields its blessing.

The Midas touch which turns to gold everything it handles comes out even in his shortest fragments. He has to write a half-page review of the rental book of a French abbey; he detects facts which suggest (a) an explanation of the English rod, pole or perch being $16\frac{1}{2}$ feet; (b) an analogy of the English manorial system having already given way by 1250; (c) a warning that English economic history is not catastrophic; (d) a prediction that the twelfth-century fall in silver will turn out to be as eventful as the better known fall in the sixteenth century.

He has to review a book of the Records of Lincoln's Inn. See what he makes of it: The Inns of Court are the most purely English of all English institutions, and the influence they exercised over the current of our national life could not easily be overrated. They saved the Common Law. For why in England was there no 'reception' of Roman law as on the Continent? There were plenty of people to advise the New Monarchy to look to Roman Law for apt instruments; Star Chamber and similar courts were everywhere cutting down the Common Law; the law reports were running dry; Pole was urging that Roman Law was received in all well-ruled states. 'The new Protestantism favours Roman Law, for your common lawyer is apt to be mediaevally and even Popishly inclined.' The one difference between England and other countries was that English law had been taught by certain fellowships of lawyers; so in England the struggle was not between doctrine and practice, but

between doctrine and doctrine; and doctrine has its wonderful Renaissance in Coke. 'Perhaps nothing so important was done by any mediaeval Parliament as when this fellowship began to teach English law.'

In one place, and one only, Maitland writes with no peculiar distinctiveness beyond terseness and lucidity; it is in an encyclopaedia and that an encyclopaedia of law. He subdues himself to his company when he writes, among lawyers and for lawyers, articles on Borough English, Court Baron and Court Leet, and Canon Law. It may be a comfort to the average man, who soon tires of hearing Aristides called 'the just', to discover that Maitland could have been as dull as any other legal writer had he chosen. But it took the twofold narcotic of law and an encyclopaedia to effect this. For in the ordinary *Encyclopaedia Britannica* his article on the History of English Law, from the Anglo-Saxon dooms to the Statutes passed in 1900, has all his usual merits and may be called the irreducible minimum which every educated man should read.

Maitland came back to academic life in 1888. When it is said he came back to academic life the stress is not on the adjective. There seems an agreement to use the word 'academic' as a term of reproach, for all that is barren, lifeless, unreal—to expect academic learning to mean everything opposed to robust reform, to be a synonym for inertia and anaemia. No one could bring this reproach against Maitland. He was a man of the world, practical, his feet firm on the ground. Take his summary of legislation of the last hundred years in the *Twentieth Century* (January, 1901). Ours, he explains, is now the greatest system of law the world has ever known. A hundred legislatures are building on this one foundation, and legislation has become

a real experimental science. No system has ever shown such a power of rapid, continuous development. The nineteenth century will be noted for its abolition of slavery and serfdom, its protection of the weak, its zeal for legal history. The historical spirit is no longer fatalist and inimical to reform. We are prepared to give up trying to tinker the untinkerable, especially our land law. We now study history in order that yesterday may not paralyse to-day, and to-day may not paralyse to-morrow. The twentieth century ought to end in a British code greater than the French or the German, if we keep this ideal in view.—There is not much that is timid or anaemic about this programme.

Even when he intervenes in a characteristic University debate, his speech is as little 'academic' as any could be. It was on women's degrees, a controversy in which University feeling gathered itself round the two poles, and allowed no midway genus between sheep and goats; yet Maitland took up a position of compromise, and practically on the ground of peace. 'Let us have peace; let us beat our swords into ploughshares, for the undergraduates have need of these.' The proposal from a joint Oxford and Cambridge Board to have a separate Women's University, he killed by one felicitous phrase. It was a half-way house and would be known as the Bletchley Junction Academy. It would not be final for the women who would not come to it. Its supporters would be vainly waiting inside, in the waiting-room of course, while the women would be waiting outside, waiting for a change, remembering that Bletchley is a station at which you change for Oxford and Cambridge.

Maitland's *Lectures on Canon Law* are perhaps the book one could best recommend to the average reader.

He has to meet the extraordinary theory of the Ecclesiastical Courts Commission dictated by Stubbs, and signed by twenty-three distinguished names, that Canon Law had 'no binding force' on the English Church till ratified by that Church. How crushingly, and all the more because so courteously, he meets it, (i) by the express counter-declaration of Lyndwood, the chief authority in England in the fifteenth century; (ii) by Peckham's own statement in 1292 that all men are bound by the Pope's decrees; (iii) by the fact that England added nothing worth counting to Canon Law. Finally, reluctant as he would be to expose divers reverend, noble, and learned commissioners to playing the chief rôle in an *auto-da-fè*, he invites us to see what short work a Church court would have made of any who talk of Canon Law of the Church of Rome as if that was not the whole Church, and how for those who hint that the English Church was not bound by Papal statutes, 'the archbishop may feel it his painful duty to relinquish you to the lay arm, and you know what follows relinquishment to the lay arm.' In Lecture II he proves that the claim of independence of the English Church from Rome has been confused with the practice of the English State to seize part of the Church's field of jurisdiction, and that the barons' '*Nolumus leges Angliae mutare*' has been misread to mean a rejection of Canon Law by the English Church, whereas the bishops had just said '*Nolumus legi ecclesiae non obedire*'. So the State took the question of legitimacy away from the Church courts, and sent it before a lay jury. 'Between Church and State the honours were divided, but the State took the odd trick.' Then in the rest of the lecture he goes on to treat this one controversial point in such a way as not merely to elevate

controversy into dispassionateness, but he also uses it as the thread on which to build up a review of relations of Church and State and Papacy, which is so masterly that beside it Stubbs's chapter on the same subject at the close of his great *Constitutional History*—will you excuse me for not completing the sentence? for here in Oxford, whose School of History owes so much to Stubbs, it would be like speaking disrespectfully of the equator.

You will perhaps listen to Dr. Rashdall where you would not to me, when he says that the history of the mediaeval Church in England requires to be re-written in this new light. Fortunately it is a kindly light of comprehension and toleration far removed from those bitter, narrow, and distorting rancours that have made the *odium theologicum* a proverb, and might suggest as an ironical motto for a library of Church History, 'See how these Christians love one another.' It was from churches in this sense that Maitland announced himself a dissenter when he apologizes in the preface for the intrusion of a non-party man into a party quarrel. 'The assumption will be made that any one who writes about these matters is an advocate of either English or Roman. I think it right, therefore, to state that I am a dissenter from these and from other Churches.' May I here refer to what I said in the former lecture on the difference between anti-sacerdotal and anti-religious? Is it entering on too delicate ground in Oxford to suggest that a dissenter is not necessarily irreligious? If I dared I would quote a half-page *in extenso*, but I have received hints that some of my audience have such delicate digestions that they must have their wine watered and their Maitland minced.

His fair-mindedness comes out in his defence of the

canonist. 'Some of us do not like lawyers, some of us do not like priests; upon the man who was half priest, half lawyer, many dislikes are concentrated.' He sees the true defence or rather the glory of Canon Law; its universality, its rationality, its finality. He sees that the choice lay between anarchy and Papal monarchy. He is as far above Protestant prejudice as he is above Catholic obscurantism.

One of the few cases in which one can wish Maitland had written differently is when, in a very unusual fit of impatience, he suddenly turns round on Canon lawyers and accuses them of idle ingenuities, of playing a game with doggerel hexameters and tables of affinity, of treating men and women as pawns, of being actuated neither by deep policy nor by genuine religious feeling. I fear this must be called inadequate as a final judgement on this difficult but absorbing subject.

I must touch briefly on Maitland's treatment of other writers. Take a review, it is of the Dean of Lichfield's *History of Marriage*. What could be more graceful than the way in which he handles the two cases of King John and Simon de Montfort, in which the author accuses Innocent III and Gregory IX of granting dispensations for adulterous second marriages when the first wife was living. 'These were days when such dispensations were granted readily,' says the Dean. Maitland knocks the bottom out of each of the supposed cases very firmly but very courteously, and concludes, 'Yes, and these also were the days when Innocent III was laying France under an interdict to constrain Philip to take back his Danish wife. These Popes were shamelessly inconsistent, were they not?'

What could be more generous and yet more just than Maitland's estimate of Stubbs?

'We have had a king, and now are kingless. . . . Those who have the best right to judge are just those who place him highest. As an augments of knowledge, as a model of method to other scholars, he was supreme. He showed us the whole process of historical work from the hunt for MSS. to the perfected tale. He is equal to the greatest among the Germans, to Mommsen; and Mommsen's career was not cut short by a bishopric. In the Rolls volumes Stubbs's single work raised the whole series by many degrees. But for the fact that his best work in this series is somewhat out of sight, his fame would be far higher still; for here he shows his great narrative power and his sympathy for erring and straying men. Indeed Stubbs's men err and stray in the most lifelike manner.'

'In the *Constitutional History* the great facts are the ease with which he moves the enormous mass of matter, and the originality of alternating narrative with analytic chapters, so as to bring out the need of studying institutions and human beings in conjunction.'

'The parts from 1066 to 1185 will never be superseded.'—'One could read the book and never guess to what party the writer belonged in politics, hardly even to what party he belonged in the Church. Had he carried further his work on the Reformation he would have done justice to Papist and Puritan.'—'His writing was so solid, so real, so wise, so essentially fair-minded, that it is a training in historical justice.'

I have dwelt a moment on this because such generous and discriminating praise does honour to both men, 'it blesseth him that gives and him that takes'; because we should never forget in Oxford our debt to Stubbs; and because it would have been easy enough for him to put in the forefront the many points in which the Epigoni on Stubbs's shoulders have corrected him. His courtesy to other writers was not a formal habit; it was closely connected with a readiness, almost unique, to listen to criticism and to acknowledge mistakes, as when he

accepted Mr. Stevenson's acute correction about burh-gate-setl, or Professor Vinogradoff's conclusive reconstitution of folk-land, or Mr. Tait's admirable comments on his *Domesday* and his *Township and Borough*. All this springs from a double source, an innate generosity of character which is connected with the sympathy and humanity which I spoke of in my first lecture, and an innate reasonableness of mind which enabled him to do justice to a view without jealousy. It was this generosity which made him so ready to aid those who applied to him for advice; I have a letter of his to me giving encouragement and offering help, which I shall always cherish as a possession.

Shall I seem ungracious if I offer an observation on the way in which character reflects itself in writing in the case of the five great Oxford historians? Each of them did great things in the cause of history; for the great and varied gifts which each displayed we in Oxford have special ground to return thanks. But great as they all were in their different ways, each could have had something to learn from Maitland, and he was so generous to Oxford that we must make concessions in return. After reading him we cannot but be conscious that by comparison Freeman wants depth and penetration, as Gardiner wants form and artistic finish; in Froude there is a lack of historical scrupulosity and dispassionateness; Creighton has a certain love of paradox and an unevenness of treatment; Stubbs an English awkwardness in handling abstract ideas, and occasionally an unexpected timidity or narrowness.—‘Sed quo Musa ruis? quae te dementia cepit?’ Let us return to our Maitland.

Some of his excellence I should put down to his coming fresh to the work, not as a trained historian;

indeed, somewhat of an amateur. For perhaps an historian like a poet, *nascitur non fit*; Gibbon and Macaulay were non-professional, even non-professorial; and so was Darwin. But we may here apply what he himself said of Leslie Stephen, who had bewailed his own position as 'jack of all trades, master of none; not a scholar, not a philosopher, not an historian; only an amateur'. His biographer justly replies, 'But such an amateur, so untrammelled a thinker, so sincere a speaker, is worth more to the world than many professionals.' May we not go on with the concluding words, 'He wrote till he could no longer hold a pen, and read until his eyes closed. It is a splendid record.'

I have perforce to leave out the greatest of all sides of Maitland's work, his work on Corporateness in the Modern State. This work is fascinating in interest and immeasurable in importance. It would need a lecture to itself. For its importance I vouch to warranty an authority we all recognize, that of Professor Dicey; 'Appello Caesarem.' Maitland himself quotes Professor Dicey's words: 'when a body of men bind themselves to act together in a particular way for some common purpose, they create a body which, by no fiction of law, but by the very nature of things, differs from the individuals of whom it is constituted.' I will borrow from France a comment on this.

'Europe in the Middle Ages was one vast community of legal forms. It will have to become this again under pressure of economic necessities, and other modern agencies of civilization. . . . Of that great day Maitland will have been one of the pioneers' (Saleilles).

His service is therefore not merely to knowledge but to civilization. No one can study mediaeval history in its bearing on the modern world without this conviction

of some future reunion of Europe forcing itself upon him, but I do not know if I should have had the courage to state so ambitious a speculation unless I had found it endorsed by the leading French jurist of our day. The gigantic experiment of Mediaeval Christendom to reduce to a reality that glorious vision of St. Augustine, the kingdom of God upon earth, should be seen in its true light, as the greatest thing ever attempted by the spirit of man. We all know how it failed; we have heard only too much of the crimes of the Popes and the sins of the Church. It is time we took a broader view than this, for there are some ideals which ennoble even failure in their cause. Perhaps it is not too soon to dream of a great day when the civilized world will once more draw together under community of need or community in a renovated ideal. 'Of that great day Maitland will have been one of the pioneers.'

One who knew him well has told us what he playfully said should be his own epitaph. What did Maitland mean by choosing for his epitaph, *HIC JACET PERSONA FICTA*? for here as ever under all his humour there is a truth. He meant that his last years had been devoted to the idea of Corporation or Community; had been spent (if I may repeat a phrase) in a rarefied atmosphere of a high table-land where three empires meet,—history, law, and philosophy; that he wished to be remembered as one who vindicated the historian's duty as the duty of tracing the growth of ideas, and showing their overwhelming importance for human progress, 'The ideas of law are at bottom economic and even moral ideas applied to daily life.' Perhaps there was a touch of regret that he had not achieved more, that his work was so broken and scattered. For marvellous in output and still more in quality as it was, broken and

imperfect it appeared to him, his standard was so high, his plan so lofty. Let it be ours to gather it up and preserve it, to focus it, to make it a model.

Is all this an over-valuation of Maitland? I might appeal to Professor Vinogradoff's estimate in the current *Historical Review*. I might defend it by Acton's estimate of Maitland as 'the ablest historian in England'; an estimate pronounced while Stubbs, Gardiner, and Creighton were living. But I would say in defence of my own: Is there a serious danger of an Oxford man being too ready to admire a Cambridge writer, a danger of a student of history being too grateful to a lawyer? Well, let us appeal to the tribunal that has already taken in hand the pronouncement, and now has begun to reform the spelling of our language; let us hear American opinion. Of his *Domesday*, a competent American critic (Professor Andrews) remarks that a new book by Maitland constitutes an epoch. Of his *Township and Borough*, Professor Gross, the well-known writer and bibliographer, says it is a book which should be a model of the one proper method in which to write local history.

In summing up twelve years of Maitland's work, Professor Bigelow emphatically declares that to a learning like that of Brunner, Maitland superadds a quality that is all his own, and that can be called by no less name than genius.

The remarkable series of appreciations in the *Law Quarterly Review* of April 1907, give the deliberate judgement on him by the leading authorities in America, France, Germany, Italy; great judges and writers on jurisprudence, Romanists and Germanists, common lawyers, canonists, civilians, even philologists have united to put him in the first rank of each study. 'We

acknowledge him as our master' (America). 'No one has thrown such light on feudalism' (France). 'His Canon Law is a golden book, and his lecture on the Renaissance, in 1901, a masterpiece of learning and genius' (Italy). 'He has brought England out of an isolation which is by no means splendid, and plunged her into the mid-stream of European thought' (Berlin, Brunner). 'As a researcher and an expositor he was already famous; his work on Corporation shows him as an original thinker of the first rank' (Vienna, Redlich). But most I value Liebermann's words: 'He not only rose superior to bodily weakness by a creative energy and an indomitable cheerfulness, but out of his very disadvantages he won a deeper sympathy for men, and a broader view of things.' 'Non ignara mali miseris succurrere disco.' It is not poets alone who learn in suffering what they teach in song.

Maitland's own humorous epitaph for himself suggests to me another remark, which I believe to be neither unwarranted nor unnecessary. He who traced the growth of personality in Law and in History is a living vindication and triumph of the principle of personality in the historian. History, do what we will to make it a science, obstinately persists in being an art, and one of the greatest of arts. You may bring the most conclusive arguments that history is, or ought to be, a scientific product; you may, like so many other scientific products nowadays, have it produced synthetically; you may set up at Cambridge, or elsewhere, the most modern machinery, and get the most influential lists of names on your syndicate, and turn out the most stately volumes with the crest of a University Press; but what if a stiff-necked and perverse generation will not read them even then?

You cannot, Heaven be thanked for it, eliminate the human element from the historian, any more than you can eliminate the human element from history itself, any more than you can eliminate it from religion and education. History by machinery is like charity by machinery, like teaching by machinery; the first product is sawdust, as surely as the second is workhouses, and the third is cram. Truly, machinery is justified of her children. He once remarked that the qualities which make a great lawyer are rare, and the space on the woolsack is strictly limited. But great historians are at least as rare as great lawyers, and perhaps, in the mysterious economy of the universe, they are of not less ultimate value to the progress of the race. We may safely say that Maitland will remain a force and an inspiration when some, even of those who occupied the woolsack, are mere names. If all his theories could be overthrown, all his positive results peptonized into textbooks, he would still live as a model of critical method, a model of style, and a model of intellectual temper. He shall not be shamed, whatever records leap to light. A century hence his name will stand higher still than it does to-day.

'Hic iacet persona ficta.' It reminds us, at first sight, of Burke's words, 'What shadows we are, what shadows we pursue.' I suppose it was a natural reflection to a man of vast powers prostituted to political hackwork, a man conscious that he had given up to party what was meant for mankind. But to me Maitland can never be a shadow, any more than truth, the object of his ardent lifelong pursuit, can ever be a shadow.

I have spent the last two months in the company of a writer of the first rank, who was also a thinker of the first rank; one cannot do that without getting beneath the brilliant style, beneath the profound thought, and

reaching the very man himself. To go thus through Maitland's whole written work is to become convinced that his was a beautiful nature.

Therefore, among all the eulogies on him, Liebermann's to me rings truest and deepest. 'Out of his very sufferings he won a deeper sympathy for men, and a broader view of things.'

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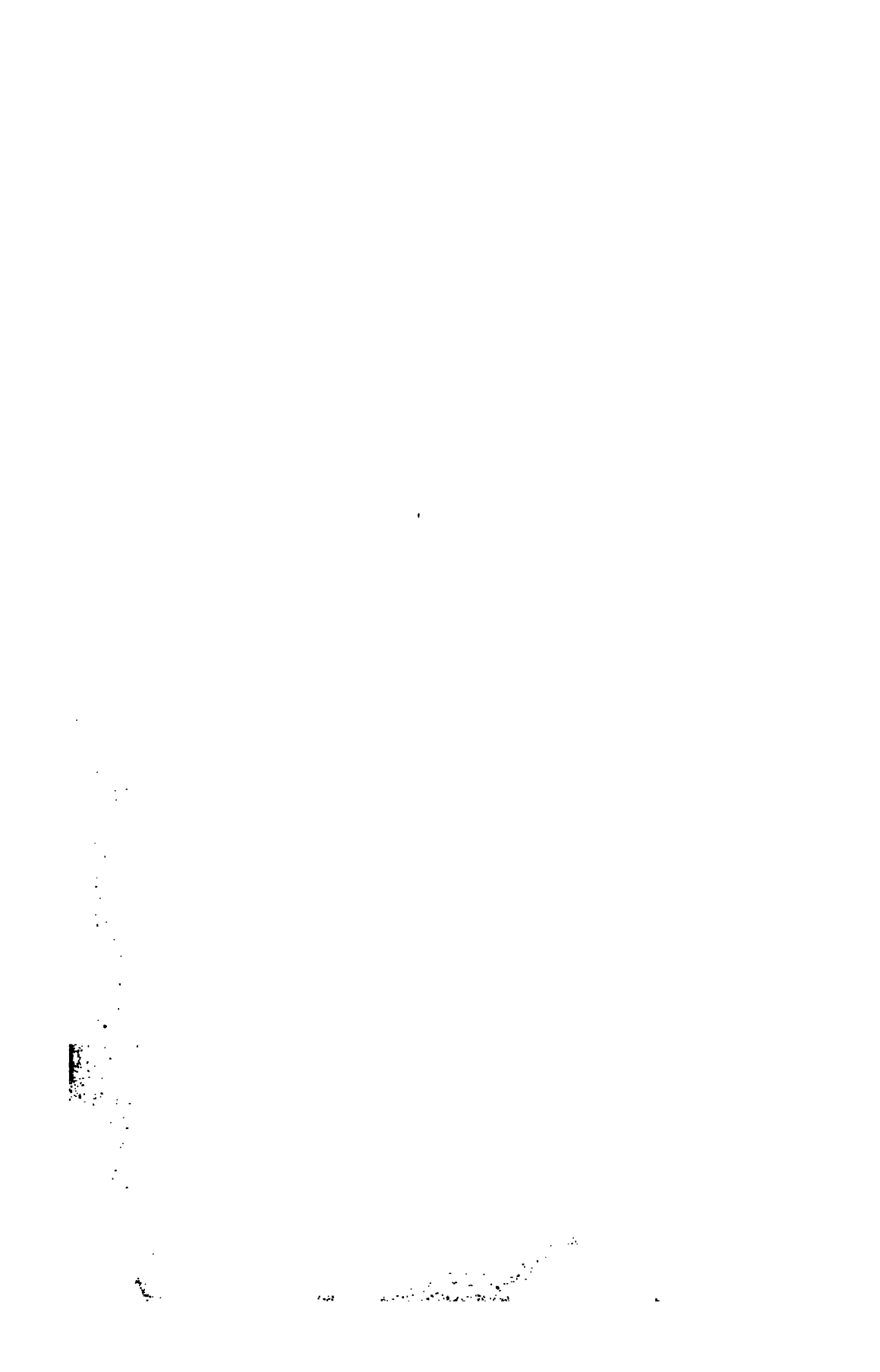
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